# IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 3 OF 2005

M/S SHYAMA CHARAN AGARWALA & SONS AND ANR., ....Appellants

Versus

UNION OF INDIA AND 14 ORS., ....Respondents

Mr. S. G. Bhobe, advocate for the appellants.
Mr. E. P. Badrinarayan, advocate for the respondent nos.1 to 6.

Coram:- R. M. LODHA, J.

Date:- 21st September, 2005

P.C.

Heard Mr. S. G. Bhobe, the learned counsel for the appellants. I perused the impugned Order and also the judgment of the Supreme Court in the case of "Hindustan Construction Co. Ltd. vs. State of Bihar & Ors." (1999)8 SCC 436.

The trial Court in paragraph 15 of the impugned Order has considered the matter as to why no restraint Order should be passed enforcing the Bank Guarantee. Inter alia, the trial Court observed that the defendant no.15 under bank guarantee has undertaken to encash the bank guarantee on demand made by the Government irrespective of any dispute raised by the plaintiff. It is not in dispute that the Government has made demand. In view thereof, the finding of the learned trial Court that the plaintiff has failed to show any prima facie case cannot be faulted. The Judgment of the Apex Court in the case of Hindustan Construction Co. Ltd. (supra) does not apply to the facts of the present case.

The Appeal From Order is dismissed in limine.

R. M. LODHA, J.

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